

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

No. CR S-02-0418 GEB GGH P

vs.

FERNANDO LOPEZ-CUEVAS,

AMENDED ORDER

Movant.

_____/

Movant is a federal prisoner proceeding pro se with a motion to vacate, correct or set aside his sentence pursuant to 28 U.S.C. § 2255. Movant filed his § 2255 motion on October 13, 2009. Respondent filed an opposition on April 16, 2010. On May 3, 2010, movant filed a request for an extension to file a reply. On May 14, 2010, the undersigned granted movant a 30 day extension to file a reply. Movant did not file a reply or otherwise communicate with the court until approximately 16 months later. On October 3, 2011, movant filed a traverse and a motion for to leave to file the traverse. Movant states that it took so long to file a traverse because he is indigent, cannot speak or write English and no other inmates were able to help him until recently. Movant's motion is denied and the traverse is stricken. Movant was provided an extension in May 2010, but did not file a traverse or otherwise communicate his difficulties to the court for 16 months. While great latitude is provided for pro se litigants, movant seeking

1 good cause to excuse 16 months of silence and to file a traverse 16 months late is well beyond
2 acceptable—even for a person who alleges that he cannot speak or write English.

3 During trial, on February 11, 2004, a in camera hearing was held out of the
4 presence of the jury and the prosecution, between the trial court, movant and movant's attorney
5 as movant requested counsel be relieved and new counsel appointed. This hearing was not
6 transcribed and does not appear in the trial transcript. However, the hearing contains information
7 relevant to the instant § 2255 motion which contains 24 claims of ineffective assistance of
8 counsel.

9 Therefore, Court Reporter Kimberly Bennett shall prepare a transcript of this
10 hearing.¹ Once the transcript is prepared, Court Reporter Bennett shall forward it to the Office of
11 the Clerk for filing under seal. No briefing is required in response to the transcript and the court
12 will not review any briefing if submitted.

13 Accordingly, IT IS HEREBY ORDERED that:

14 1. The order filed October 6, 2011, (Doc. 208) is vacated.

15 2. Movant's motion to file a traverse (Doc. 206) is denied and the traverse (Doc.
16 207) is stricken;

17 3. Court Reporter Kimberly Bennett shall prepare a transcript of the February 11,
18 2004, in camera hearing. Once the transcript is prepared, Court Reporter Bennett shall forward it
19 to the Office of the Clerk for filing under seal.² No briefing is required in response to the

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23 ¹ Attorney-client privilege has already been waived in this case (Doc. 186). Although the
24 hearing seemingly contains no prejudicial information with respect to counsel, the undersigned
will keep it sealed as persons with different perspective might disagree.

25 ² If the parties wish to obtain a copy of the hearing transcript, they must contact Court
26 Reporter Kimberly Bennett, and are hereby authorized to obtain the sealed transcript paying such
fees as are ordinarily paid.

1 transcript and the court will not review any briefing if submitted.

2 DATED: October 6, 2011

3 /s/ Gregory G. Hollows
4 UNITED STATES MAGISTRATE JUDGE

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